

REMARKS

Claims 1-20 were pending in this application.

Claims 1-20 have been rejected.

Claims 1 and 15 are amended herein.

Claims 1-20 remain pending in this application.

Reconsideration of the claims is respectfully requested.

In Sections 1-3 of the June 10, 2004, Office Action, the Examiner rejected Claims 1 and 15 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner asserted that the term “resource-constrained” is not defined in the specification or the claims and that one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Furthermore, the Examiner also asserted that there is insufficient antecedent basis for the limitation “the wireless communications device.”

In response to both assertions, the Applicants have amended Claims 1 and 15 to remove the term “resource-constrained” and recite an apparatus and method for wireless software download to a wireless communications device capable of Internet access.

In Sections 4 and 5 of the June 10, 2004, Office Action, the Examiner rejected Claims 1-20 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,243,596 to Kikinis (hereafter “*Kikinis*”). The Applicants respectfully traverse the rejection of Claims 1-20.

A prior art reference anticipates the claimed invention under 35 U.S.C. §102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP §2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP §2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

The Applicants direct the Examiner's attention to independent Claim 1, which contains following unique and novel limitations:

1. (Currently Amended) For use in a communications system, an apparatus for wireless software download to a wireless communications device capable of Internet access comprising:
 - an auxiliary device including sufficient storage for holding software to be downloaded; and
 - a connection between the wireless communications device and the auxiliary device,wherein the software to be downloaded is retrieved from a remote server through a wireless connection for the wireless communications device to the auxiliary device and installed from the auxiliary device onto the wireless communications device. (*emphasis added*)

The Applicants respectfully assert that the Examiner has misunderstood the teaching of the *Kikinis* reference, which does not disclose, suggest, or even hint at the above-emphasized limitations.

The *Kikinis* reference describes a cellular telephone battery pack having computerized elements that provide the functionality of an Internet browser. *See Kikinis, Abstract, lines 1-4*. The computerized elements include a display device for viewing Web pages and input devices including a pointer device. *See Kikinis, col. 15, line 62, through col. 16, line 7*.

The Examiner cites column 15, lines 12-13, as describing that “software to be downloaded is retrieved from a remote server through a wireless connection between a wireless communications device to an auxiliary device and installed from the auxiliary device onto the wireless communications device.” The cited passage and the succeeding sentence state:

Referring now to FIG. 9, a unique cellular phone battery pack adapter 100 is provided and adapted to allow a cellular telephone to which the battery pack adapter is engaged to act as a portable computer with Internet browsing capability. Battery pack adapter 100 comprises a battery for powering the cell-phone browsing device, and also hardware and software for providing functionality as an Internet browsing device. (*emphasis added*)

Thus, in the passage cited by the Examiner, *Kikinis* further clarifies that it is the battery pack that provides the hardware and software to allow the cellular telephone to which it is attached to act as a portable computer with Internet browsing capability.

Furthermore, the Examiner asserts that *Kikinis* describes “an auxiliary device including sufficient storage for holding software to be downloaded” at column 18, lines 38-60. In pertinent part, the cited passage states:

A non-volatile memory (NVMEM) 404 is provided for storing semi-permanent software such as a NannoBrowser application, video and audio software, compression/decompression software and the like. NVMEM 404 also houses a minimal operating system for the computer functions of the disclosed device. In some embodiments of the present invention, an operating system such as the one described above may be provided by the manufacturer of cellular phone 310 along with other software applications needed to interact with various special servers on the Internet.

The Applicants respectfully submit that *Kikinis* is here describing software for execution by CPU 401 of the battery pack, not software to be downloaded to cellular phone 310. The cited passage

does not describe an auxiliary device including sufficient storage for holding software to be downloaded to a wireless communications device as recited in independent Claim 1.

Therefore, independent Claim 1 contains unique and non-obvious limitations that are not disclosed, suggested, or even hinted at in the *Kikinis* reference. This being the case, Claim 1 is patentable over the *Kikinis* reference. Dependent Claims 2-7 depend from independent Claim 1 and contain all of the unique and non-obvious limitations recited in Claim 1. Thus, Claims 2-7 also are patentable over the *Kikinis* reference.

Additionally, independent Claims 8 and 15 contain limitations that are analogous to the unique and non-obvious limitations recited in Claim 1. This being the case, Claims 8 and 15 are patentable over the *Kikinis* reference. Finally, dependent Claims 9-14 and 16-20, which depend from independent Claims 8 and 15, contain all of the unique and non-obvious limitations recited in Claims 8 and 15. Thus, Claims 9-14 and 16-20 are patentable over the *Kikinis* reference.

SUMMARY

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of pending claims and that this Application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@davismunck.com*.


The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

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P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *jmockler@davismunck.com*



John T. Mockler
Registration No. 39,775